

**DE 05-178**

**UNITIL ENERGY SYSTEMS, INC.**

**Petition for Base Rate Increase**

**Supplemental Order on Second Step Adjustment and Motion for Confidential Treatment**

**ORDER NO. 24,742**

**April 13, 2007**

**I. SECOND STEP ADJUSTMENT**

On October 6, 2006, by Order No. 24,667, the New Hampshire Public Utilities Commission (Commission) approved a settlement agreement reflecting a base rate increase for Unitil Energy Systems, Inc. (UES). The settlement agreement included a provision that UES be allowed to implement a two-part step adjustment to its distribution rates to recover the incremental revenue requirements associated with certain large, non-revenue producing capital investments. The first of those adjustments became effective November 1, 2006.<sup>1</sup> The second part of the step adjustment pertains to what is known as the Broken Ground land acquisition – a series of land acquisitions and transactions related to the future development of an electrical substation in Concord. In accordance with the terms of the settlement agreement, UES was required to file the final calculation of this step adjustment by February 1, 2007, with the related adjustment to UES' distribution rates to be effective beginning May 1, 2007.

On January 31, 2007, UES filed its calculation of the proposed step adjustment. According to the UES filing, the land acquisition project consisted of three separate transactions with a total capital cost of \$781,064. Taking into account the return on rate base and the related property taxes, UES calculated a total incremental revenue requirement of \$107,475 representing a 0.32 percent increase to the Company's distribution revenues.

On March 22, 2007, Commission Staff (Staff) filed a recommendation supporting the UES filing with one minor correction. Staff indicated that there was an error in the calculation of total property taxes, with the actual total being \$618 more than reported. Staff also reported that the Commission's Audit Division had reviewed the supporting documentation for the land acquisition transactions and did not find any problems. In light of the audit and Staff's analysis of the filing, Staff recommended that the UES request to implement the step adjustment be approved. According to Staff, the corrected total incremental revenue requirement associated with this project is \$108,093, which still represents a 0.32 percent increase to UES distribution revenues. Pursuant to the terms of the settlement agreement, the increase in revenues is to be recovered in a way that produces equal percentage rate impacts for all customer classes. Staff further stated that this minor rate increase would be implemented simultaneously with rate changes recently approved for Default Service in Docket No. DE 07-013<sup>2</sup> and for other retail rate adjustments currently being considered that are the subject of Docket No. DE 07-035.

We find the UES request to implement the second step adjustment to be just and reasonable as required by RSA 378:7 and we approve it with the \$618 correction to property taxes described above. According to Staff's March 22, 2007 recommendation, the \$108,093 of incremental revenue requirements to be recovered via the step adjustment represents an increase of \$0.05 per month, or 0.1 percent, to the overall bill to a residential customer using 500 kilowatt-hour (kWh) per month.

## **II. MOTION FOR CONFIDENTIAL TREATMENT AND PROTECTIVE ORDER**

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<sup>1</sup> See Order No. 24,702 (November 22, 2006).

<sup>2</sup> See Order No. 24,735 (March 26, 2007).

The settlement agreement also required UES to file a calculation for a temporary surcharge which would allow UES to recover, among other things, prudently incurred rate case expenses. Under a stipulation filed on January 16, 2007, UES, Staff and the Office of Consumer Advocate (OCA) agreed to recommend that the Commission approve UES's recovery of certain rate case expenses through the surcharge. The Commission approved the stipulation on January 26, 2007, by Order No. 24,726.

The day before this Order was issued, UES filed a motion for confidential treatment and protective order in connection with UES's responses to certain data requests propounded by Staff regarding rate case expenses. More specifically, UES sought confidential treatment for (a) information concerning legal fees charged by UES' outside legal counsel for other clients, the blended rate and discount to be charged to UES, and the breakdown of the legal budget contained in outside legal counsel's estimate to UES, (b) the billing rate and invoice totals for work performed on the rate case by UES witness Robert Yardley and UES' outside legal counsel and attorney assistant, (c) the home address and compensation rates for three temporary employees hired by UES in connection with the rate case, (d) the total hours worked and amount paid to one of the temporary employees for work performed on behalf of UES' affiliate, Fitchburg Gas and Electric Light Company, and (e) certain information on invoices regarding services not related to the rate case.

In support of the motion, UES asserted that this information is not publicly disclosed nor is it available from other sources and that disclosure of this information, including the compensation information contained in the copies of invoices and billing rates, may detrimentally impact upon the attorneys' and the consultants' relationships and ongoing work on

behalf of other clients, and their ability to solicit further engagements from these clients and other potential clients. In addition, UES asserted that the information regarding the temporary employees for which confidential treatment is sought is confidential and personal information and reveals confidential employment strategies of UES.

The Right-to-Know Law provides each citizen with the right to inspect all public records in the possession of the Commission. *See* RSA 91-A:4, I. The statute contains an exception, invoked here, for "confidential, commercial, or financial information." RSA 91-A:5, IV. In *Union Leader Corp. v. New Hampshire Housing Finance Authority*, 142 N.H. 540 (1997), the New Hampshire Supreme Court provided a framework for analyzing requests to employ this exception to shield from public disclosure documents that would otherwise be deemed public records. There must be a determination of whether the information is confidential, commercial or financial information "and whether disclosure would constitute an invasion of privacy." *Id.* at 552 (emphasis in original, citations omitted). The "asserted private confidential, commercial, or financial interest must be balanced against the public's interest in disclosure, . . . since these categorical exemptions mean not that the information is *per se* exempt, but rather that it is sufficiently private that it must be balanced against the public's interest in disclosure." *Id.* at 553.

The Commission's rule on requests for confidential treatment, N.H. Code Admin. Rules Puc 203.08, is designed to facilitate the employment of this balancing test. Consistent with RSA 91-A, the Commission requires petitioners to: (1) provide the material for which confidential treatment is sought or a detailed description of the types of information for which confidentiality is sought; (2) reference specific statutory or common law authority favoring confidentiality; and

(3) provide a detailed statement of the harm that would result from disclosure to be weighed against the benefits of disclosure to the public.

Considering that redacted versions of all the documents are available in the public file and contain much information concerning the underlying matters, including details of the hours billed to UES for various services, that the information sought to be afforded confidential treatment contains personal information such as home addresses and commercial information not otherwise publicly available, including information about transactions between outside counsel and other clients, and in the absence of any objection to the motion for confidential treatment and protective order that might assert a benefit of disclosure to the public and applying the above-described standards we grant the motion. Consistent with our practice, the confidential treatment provisions of this Order are subject to the on-going authority of the Commission, on its own motion or on the motion of Staff, any party or any other member of the public, to reconsider the protective order in light of RSA 91-A, should circumstances so warrant.

**Based upon the foregoing, it is hereby**

**ORDERED**, that UES' implementation of the second step adjustment as corrected herein is approved, effective with service rendered on and after May 1, 2007; and it is

**FURTHER ORDERED**, that UES shall file a compliance tariff with the Commission on or before April 30, 2007, in accordance with N.H. Admin. Rules Puc 1603.02(b); and it is

**FURTHER ORDERED**, that UES' motion for confidential treatment and protective order filed with the Commission on January 25, 2007 is granted.

By order of the Public Utilities Commission of New Hampshire this thirteenth day of  
April, 2007.

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Thomas B. Getz  
Chairman

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Graham J. Morrison  
Commissioner

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Clifton C. Below  
Commissioner

Attested by:

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Debra A. Howland  
Executive Director & Secretary